

CHAPTER 264.

[Published April 16, 1880.]

AN ACT to amend chapter one hundred and thirty-nine, of the Revised Statutes, entitled "Of appeals, writs of error and proceedings thereon."

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

- SECTION 1.** It shall not be necessary to issue a writ of error to bring up any judgment made or rendered, in any circuit court, for review before the supreme court, but the same, as well as orders made by the circuit court, may be reviewed as prescribed in this act, by a proceeding which is hereby denominated an appeal, and the parties to such proceeding shall be known as appellant and respondent.
- Who may appeal.** **SEC. 2.** Any party aggrieved may appeal in the cases prescribed in this act.
- How appeal to be made.** **SEC. 3.** An appeal must be made by the service of a notice in writing on the adverse party, and on the clerk of the court in which the judgment or order appealed from is entered; stating the appeal from the same, and whether the appeal is from the whole or some part thereof. If the appeal is from a part of any such order, or judgment, the party appealing shall specify from which part thereof he appeals.
- When appeal complete.** **SEC. 4.** An appeal shall be deemed to be perfected by the service of the notice of the appeal, and the undertaking, as provided in this act.
- Clerk to transmit judgment roll to supreme court.** **SEC. 5.** Upon an appeal being perfected, in the manner provided in this act, the clerk of the court from which the appeal is taken, shall, at the expense of the appellant, forthwith transmit to the supreme court, if the appeal is from a judgment, the judgment roll; if the appeal is from an order, he shall transmit the order appealed from, and the original papers used by each party on the application for the order appealed from. The court may, however, in each case, direct copies to be sent in lieu of the originals. The clerk shall also, in all cases, transmit to the supreme court the notice of appeal, and the undertaking given thereon; and he shall annex to the papers so transmitted, a certificate under his hand, and the seal of the court from which the appeal is taken, certifying that they are the original papers, or copies, as
- To transmit order.**
- Clerk to transmit notice and append certificate.**

the case may be, and that they are transmitted to the supreme court pursuant to such appeal. No further certificate or attestation shall be necessary.

SEC. 6. Upon an appeal from a judgment, the supreme court may review an intermediate order involving the merits, and necessarily affecting the judgment.

Supreme court may review intermediate order.

SEC. 7. Upon an appeal from a judgment or order, the supreme court may reverse, affirm, or modify the judgment, or order appealed from, and if the appeal is from a part of a judgment or order, may reverse, affirm, or modify the judgment as to the part appealed from, and also as to any or all of the parties, and may, if necessary or proper, order a new trial. In all cases, the supreme court shall remit its judgment or decision to the court from which the appeal was taken, to be enforced accordingly; and if the appeal is from a judgment, final judgment shall, thereupon, be entered in the court below, in accordance therewith, except where otherwise ordered. The clerk of the supreme court shall remit to the court from which the appeal was taken, the papers transmitted to the supreme court on the appeal, together with the judgment or decision of the supreme court thereon, within thirty days after the same shall have been made, unless the supreme court, on application of either of the parties, shall direct them to be retained, for the purpose of enabling such party to move for a rehearing. In case such motion for a rehearing is denied, the papers shall be transmitted within thirty days after such denial. The clerk of the supreme court shall, in all cases, except when the judgment or order appealed from is affirmed, also transmit with the papers so returned by him, a certified copy of the opinion of the supreme court, and his fees for such copy shall be taxed and allowed with his other fees in the case.

Authority of supreme court

Supreme court to remit decision to court from which appeal was taken

Clerk to remit papers.

SEC. 8. Appeals to the supreme court may be taken from the circuit courts, and also from county courts having civil jurisdiction, except in cases where express provision is or may be made by law, for an appeal to the circuit court from county courts, and from any court of record having civil jurisdiction, when no other court of appeal is provided by law.

Fees how allowed.

Appeals may be taken from circuit and County courts in certain cases.

SEC. 9. Appeals may be taken to the supreme court from judgments in civil actions, within two years from the entry thereof, and from orders made by the circuit court within thirty days after written notice of the mak-

Time when appeals may be taken.

Writs of error limited to two years. ing of the same. The time within which a writ of error may be issued in any case, is hereby limited to two years from the date of the judgment rendered in the case in which the writ is taken.

Orders that may be carried by appeal to supreme court.

SEC. 10. The following orders may be carried, by appeal, to the supreme court: 1. An order affecting a substantial right, made in any action, when such order, in effect, determines the action and prevents a judgment from which an appeal might be taken. 2. A final order affecting a substantial right made in special proceedings, or upon a summary application in an action after judgment. 3. When an order grants, refuses, continues, or modifies a provisional remedy; or grants, refuses, modifies or dissolves an injunction; when it sets aside or dismisses a writ of attachment for irregularity; when it grants or refuses a new trial; or when it sustains or overrules a demurrer. 4. When it involves the merits of an action, or some part thereof; when it orders judgment on application therefor, on account of the frivolousness of a demurrer, answer, or reply, or strikes off such demurrer, answer, or reply, on account of the frivolousness thereof. 5. From orders made by the circuit court, vacating or refusing to set aside orders made at chambers, where, by the provisions of this act, an appeal might have been taken, in case the order so made at chambers had been granted or denied by the circuit court in the first instance. For the purposes of an appeal from an order, either party may require the order to be entered by the clerk of record, and it shall be entered accordingly.

Either party may require order to be entered.

What errors may be reviewed.

SEC. 11. Upon an appeal to the supreme court from any judgment, such alleged errors only shall be reviewed as appear upon the face of the record transmitted from the circuit court.

Either party may procure bill of exceptions.

SEC. 12. Either party to a judgment, rendered after a trial, either by the court or jury, of any issue or issues of fact, who shall desire to have reviewed, in the supreme court, any of the rulings of the circuit court made upon the trial of such issue or issues, may procure, to be settled and made a part of the record, a bill of exceptions, in the manner provided in this act. For the purpose of reserving any exceptions, to be reviewed as aforesaid, either party may, on such trial, cause any such exceptions to be noted by or entered in the minuits [minutes] of the judge before whom the cause is tried, or reduced to writing in the same manner, as has been heretofore the

How exceptions reviewed.

practice in this State. Within sixty days after the service of written notice of the entry of the judgment, the party desiring to appeal shall serve upon the adverse party a copy of the bill of exceptions, which shall contain the testimony given on such trial, or so much thereof as may be necessary to show the exceptions taken, and the rulings and decisions of the judge to which exceptions were taken, with a statement of such exceptions.

Bill of exceptions to be served within 60 days.

Written exceptions to orders, made before judgment, may be filed within ten days after written notice of such orders, and the same, with such orders, may be incorporated into such bill of exceptions. Exceptions to the charge of the court to the jury, in cases where a trial by jury was had, may also be taken and noted in the same manner as has been heretofore the practice in this State, and such exceptions, with the charge of the court, or so much thereof as may be necessary to show the exceptions taken, in cases where a review of such exceptions is desired, may also be set forth in the bill of exceptions.

Written exceptions to be filed within ten days. Exceptions to be noted in case of jury trial.

The adverse party may, within ten days after service of a copy of the bill of exceptions on him, prepare and serve amendments thereto. Either party may then serve the opposite party with a notice to appear, at a specified time and place, before the judge who tried the cause, to have the bill of exceptions, and the amendments thereto, if any, settled. The time for settling the bill of exceptions, specified in such notice, shall not be less than four nor more than twenty days after the service thereof.

Amendments by adverse party. Either party may serve notice.

Time for settling bill of exceptions.

The bill of exceptions, when settled, shall be signed by the judge before whom the same is settled. The bill of exceptions need not be sealed; when settled as herein provided, it shall be filed with the clerk of the court in which the judgment was rendered, and the clerk shall

Bill of exceptions to be signed by judge. Filed.

annex the same to the judgment roll, and upon the same being so annexed, it shall from thenceforth become and be deemed a part thereof. The judge of the court before whom, or the county judge or court commissioner of the county in which the case was tried, may, in his discretion, enlarge the time for serving the bill of exceptions and the amendments thereto, and for settling the same.

Time for serving may be enlarged.

SEC. 13. In cases where any issue of fact is tried by the court, either party, for the purposes of an appeal, may, within ten days after written notice of entry of the judgment thereon, or may without such written notice, file with the clerk, written exceptions to the facts found by the judge who tried the cause, or to his conclusions

Either party may file exceptions in certain cases.

of law thereon, or both or to any of them, and may, in case of an appeal or writ of error, brought upon the judgment rendered on such decision, incorporate such written exceptions into the bill of exceptions settled, in the case; but such bill of exceptions must, in all cases, be served within sixty days after written notice of the judgment, notwithstanding the time allowed in this section for filing written exceptions to the decision filed in the case.

Bill must be served within sixty days. **SEC. 14.** In cases tried before a referee, either party, for the purposes of an appeal, or suing out a writ of error, may cause exceptions to be taken and noted, by the referee, during the trial, in the same manner as in case of a trial before the court or jury. The referee shall note, in his minutes, any exceptions so taken, and shall return them, and all the testimony taken before him, with his report, to the court in which the cause is pending. Exceptions, in writing, to the facts found by the referee, or to his conclusions of law thereon, or to both, may be filed within ten days after written notice of the filing of the report, and all such exceptions may be heard and determined by the court, on the motion to confirm such report. In case of an appeal from, or writ of error brought upon, the judgment rendered upon the report of a referee, the party appealing or suing out such writ of error, may cause a bill of exceptions to be made and settled, as provided in this act, and he may embody in and make a part of such bill of exceptions, the written exceptions, if any, filed to the facts found by the referee, and to his conclusions of law thereon. In case the report of the referee is modified by the court in which the cause is pending, either party, for the purposes of an appeal, may, within ten days after written notice of the entry of the judgment upon such report, file written exceptions to such modification, which exceptions may also be incorporated into, and made a part of, the bill of exceptions settled in the case.

Proceedings for appeal in cases tried before a referee.

Proceedings in cases of appeal from report of referee.

When report of referee is notified by court either party may file exceptions.

SEC. 15. It shall only be necessary to cause a bill of exceptions to be settled and made a part of the record as herein provided in cases where the party desiring to appeal or sue out a writ of error, may desire to have reviewed in the supreme court any alleged errors, which, without such bill of exceptions, would not appear upon the face of the record.

Supreme court may re- **SEC. 16.** Upon an appeal to the supreme court, from a judgment rendered in cases tried by the court, or be-

fore a referee, the supreme court may review any question of fact, as well as of law, decided by the court or referee, when exceptions have been taken to the findings upon matters of fact. view questions of fact as well as law.

SEC. 17. When a party shall, in good faith, give notice of appeal, and shall omit, through mistake or accident, to do any other act necessary to perfect the appeal or make it effectual, or to stay proceedings, the court, from which the appeal is taken, or a judge thereof in vacation, may permit an amendment on such terms as may be just. No county judge or court commissioner shall permit such amendment in cases in the circuit court. Appeal may be awarded.

SEC. 18. No appeal from an intermediate order before judgment shall stay proceedings in the circuit court, unless the judge thereof, in his discretion, shall so order, and upon granting such stay of proceedings, he may also, in his discretion, require the appellant, as a condition of granting the same, to give an undertaking, executed by two or more freshholders, in such sum as he shall direct, conditioned for the payment, in case the order appealed from is affirmed, of any final judgment that may be recovered in the case by the appellee. Appeal shall not stay proceedings unless so ordered Bond to pay final judgment

SEC. 19. Upon an order made by a circuit judge or court, denying, dissolving, vacating or modifying an injunction, the party, interested in continuing the same, may give immediate notice of appeal to the opposite party, and may tender him a written undertaking, with sufficient surety, in such sum as the court or judge shall direct, conditioned to pay all costs and damages which may be sustained by such party, in case the appeal be decided in his favor, and thereupon the court or judge may make an order, in its discretion, granting the injunction asked for, or continuing it as originally granted, until the decision on the appeal, unless the opposite party shall, at any time pending such appeal, give a written undertaking, with sufficient surety, in an amount to be fixed by the court or judge, to abide and perform the judgment in the action, if it shall be in favor of the appellant; but the court shall discharge such order, if it shall appear, at any time, that such appeal is not diligently prosecuted, and such want of diligence shall be deemed *prima facie* [*facie*] evidence of a breach of the appellant's undertaking. Appeal may be taken from order on injunction. Bond to be given and injunction continued. When order of continuance may be discharged.

SEC. 20. No injunction shall be dissolved, and no attachment shall be set aside at chambers, by any other than a judge of the court in which the action is pending. How only injunction may be dissolved and attachment set aside

Proceedings necessary to make appeal effectual. SEC. 21. To render an appeal effectual for any purpose, a written undertaking must be executed, on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all costs and damages which may be awarded against him on the appeal, not exceeding two hundred and fifty dollars, or that sum must be deposited with the clerk with whom the judgment or order appealed from is entered, to abide the event of the appeal; such undertaking or deposit may be waived by a written consent on the part of the respondent.

When appeal from a judgment directing the payment of money may stay execution. SEC. 22. If the appeal be from a judgment directing the payment of money, it shall not stay the execution of the judgment, unless a written undertaking be executed on the part of the appellant, by at least two sureties, to the effect that if the judgment appealed from, or any part thereof, be affirmed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal.

Judgment directing the delivery of documents, &c., how only delayed. SEC. 23. If the judgment appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment shall not be delayed by the appeal, unless the things required to be assigned or delivered be brought into court, or placed in the custody of such officer or receiver as the court or the judge thereof shall appoint, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, in such sum as the court shall direct, to the effect that the appellant will obey the order of the appellate court on the appeal.

Judgment directing the execution of a conveyance—how stayed. SEC. 24. If the judgment appealed from direct the execution of a conveyance, or other instrument, the execution of the judgment shall not be stayed by the appeal, unless the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

Judgment directing sale &c. of real estate—how only stayed. SEC. 25. If the judgment appealed from direct the sale or delivery of possession of real property, (except in actions for the foreclosure of a mortgage) the execution of the same shall not be stayed, unless a written undertaking be executed on the part of the appellant, by at least two sureties, in such sum as the court, or the judge thereof, shall direct, to the effect that, during the possession of such property by the appellant, he will not commit, or suffer to be committed any waste thereon; and

that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof, pursuant to the judgment.

SEC. 26. If the judgment appealed from direct the sale of mortgaged premises, the execution thereof shall not be stayed by the appeal, unless a written undertaking be executed on the part of the appellant, by at least two sureties, conditioned for the payment of any deficiency which may arise upon such sale, not exceeding such sum as shall be fixed by the court, or a judge thereof, to be specified in the undertaking, and all costs and damages which may be awarded to the respondent on such appeal.

Judgment directing sale of mortgaged premises—how only stayed.

SEC. 27. If the judgment appealed from direct the abatement or restrain the continuance of a nuisance, either public or private, the execution of the judgment shall not be stayed by the appeal, unless an undertaking be entered into on the part of the appellant, by at least two sureties, in such sum as the court, or a judge thereof, shall direct, to the effect that the appellant will pay all damages which the opposite party may sustain by the continuance of such nuisance; and if the judgment appealed from direct the doing of any other particular act or thing, and no express provision is made by this act in regard to the undertaking to be given on an appeal therefrom, the execution thereof shall not be stayed by an appeal therefrom, unless an undertaking be entered into on the part of the appellant, in such sum as the court, or the judge thereof, shall direct, and by at least two sureties, to the effect that the appellant will pay all damages which the opposite party may sustain, by the not doing the particular act or thing directed to be done by the judgment appealed from.

Judgment directing abatement of nuisance—how stayed.

SEC. 28. Whenever an appeal from a judgment shall be perfected, as provided in sections twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two, of this act, it shall stay all further proceedings in the court below, upon the judgment appealed from, or upon the matter embraced therein, but the court below may proceed upon any other matter included in the action, and not affected by the judgment appealed from.

Court below may proceed on other matter in action not affected by judgment appealed from.

SEC. 29. The undertakings prescribed by this act may be in one instrument, or several, at the option of the appellant; and a copy thereof, including the names and residence of the sureties, must be served on the adverse party, with the notice of appeal, unless a deposit is made

Undertakings in one instrument or service. Copy served.

- Original filed. as provided in this act. The original undertaking must be filed with the clerk with the notice of appeal.
- Guarantee of undertaking.** SEC. 30. An undertaking upon an appeal shall be of no effect, unless it be accompanied by the affidavit of the sureties, that they are each worth double the amount specified therein, over and above all their debts and liabilities, in property not by law exempt from execution; the respondent may, however, except to the sufficiency of the sureties within ten days after notice of the appeal, and unless they, or other sureties, justify before a judge of the court below, or a county judge, as prescribed in sections nineteen and twenty, of chapter one hundred and twenty-seven, of the Revised Statutes, within ten days thereafter, the appeal shall be regarded as if no undertaking had been given. The justification shall be upon a notice of not less than five days.
- Sufficiency of sureties may be excepted to**
- Notice.**
- When amount of damages to be paid is not fixed by judgment.** SEC. 31. In cases where the amount of damages to be paid by the appellant, on affirmance of the judgment or order appealed from, pursuant to any undertaking, is not fixed by the judgment or decision of the Supreme Court, on the appeal, a reference may be ordered by the circuit court on return of the papers, and judgment or decision of the Supreme Court, for the purpose of ascertaining such damages; the expense of which reference shall be included and recoverable with such damages. In all cases a neglect, for the space of thirty days after the affirmance, on appeal, of a judgment directing the payment of money, to pay the amount directed to be paid on such affirmance, shall be deemed a breach of the undertaking on such appeal. A neglect, for the space of thirty days after the confirmation of the report of a referee, to whom a reference has been ordered, for the purpose of ascertaining the damages to be paid, on the affirmance of any other judgment or order appealed from, to pay the amount of damages so ascertained, and the costs of such reference, shall be deemed a breach of the undertaking on such appeal.
- When undertakings forfeited in case of judgment.**
- In case of referee.**
- Notice in case of undertakings.** SEC. 32. The amount of all undertakings which by the provisions of this act are required to be fixed by the court, or a judge thereof, shall only be fixed on notice to the opposite party, of at least twenty-four hours.
- When order may be vacated.** SEC. 33. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the judge who made it, or may be vacated or modified on notice, in the manner in which other motions are made.

Sec. 34. Chapters eighty-three (83), and one hundred and thirty-nine (139), of the General Laws of 1859, and sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, and twenty-four, of chapter one hundred and thirty-nine (139), of the Revised Statutes, is hereby repealed. Repeal of revised statutes.

Sec. 35. This act shall apply to and regulate appeals from the Supreme Court from county courts having civil jurisdiction. Appeals from Co. courts.

Sec. [36.] The party prevailing in the Supreme Court on any appeal, may have taxed, in his favor, the fees of the clerk of the Supreme Court on such appeal, the fees of the clerk of the circuit court for transmitting and certifying to the papers, and twenty-five dollars as attorney's fees, besides necessary disbursements, irrespective of any costs taxed in the case, in the court from which the appeal was taken. Fees to be taxed in favor of party prevailing.

Sec. 36. [37.] The Supreme Court may impose damages and costs on affirmance of any judgment on appeal, in the same manner in which they may now do, pursuant to section twenty-nine, of chapter one hundred and thirty-nine (139), of the Revised Statutes, in cases where a writ of error is brought. Supreme court may impose damages.

Approved March 30, 1860.

CHAPTER 265.

[Published April 19, 1860.]

AN ACT to legalize the official acts of Willard T. Chase, as justice of the peace of the county of Dane.

(See Supplement to Local Laws.)